that presumption against him by showing in some court of the State where the warrant is issued that the facts are not consistent with the records upon faith of which the executive acted. The rights of the citizen are thus protected by giving him the opportunity to vindicate himself while the validity of official proceedings is upheld until conclusive error is shown.

DANA *v.* VALENTINE FOLLOWED IN ENGLAND. — In *Dana* v. *Valentine*, 5 Met. 8, the plaintiff owned certain vacant lots next to the defendant's slaughter-house, which caused offensive smells in the vicinity. The court held in a *dictum* that the plaintiff had an adequate remedy at law to prevent the defendant's gaining a prescriptive right to maintain the nuisance although the plaintiff could show no actual damage. And this *dictum* is generally followed in the United States. *Farley* v. *Gate City Gas Co.*, 31 S. E. 193 (Ga.). Some fifty years later the English Court of Appeal in Chancery had the same question presented to it, and gave a different answer. *Sturges* v. *Bridgman*, 11 Ch. D. 852. There the defendant, a confectioner, had been accustomed to use mortars in his kitchen for more than twenty years. The plaintiff then extended the rear of his house so that it adjoined the defendant's kitchen, and for the first time was seriously annoyed by the noise from the mortars. He was allowed an injunction, because the defendant had gained no prescriptive right inasmuch as the plaintiff had been unable to bring action until actual damage was suffered. No action on the case would lie without proof of substantial loss. The only possible distinction between the two cases — that in *Dana* v. *Valentine* the nuisance was always apparent, while in the English case it could not be perceived until the actual damage occurred — seems an unsatisfactory refinement.

The recent English decision in *Roberts* v. *Gwyrfai District Council*, [1899] 1 Ch. D. 583, would then seem revolutionary. The plaintiff had a natural right to the uninterrupted flow of a stream by his land. The defendant wrongfully altered the flow of water as it passed the plaintiff's tenement. No actual damage resulted, yet it was held that plaintiff's common law right had been infringed and the wrongdoer was enjoined from further interference. *Sturges* v. *Bridgman* was not brought to the attention of the court and the question was dealt with somewhat summarily. In following the accepted American rule it reached a wholesome result. While it is hard for one who at present does not wish to use his land in a certain way to be deprived of its future use, it is harder still for one committing the nuisance to be driven out of business simply because a neighboring proprietor decides to change his mode of occupation. It would be in the power of the latter to destroy at his option permanent and extensive works. Public policy would seem to require an exception to the rule that an action on the case requires substantial damage when a property right has been infringed for more than twenty years, though the damage has been merely nominal. 12 HARVARD LAW REVIEW, 284.

TENDENCIES FROM YEAR TO YEAR. — It is well settled law that if a tenant for years holds over at the end of his term, the landlord has the option of treating him as a trespasser, or as a tenant from year to year where such tendencies are allowed. This is founded on a supposed agreement between the parties, implied from the mere fact of holding over. *Conway*

v. *Starkweather*, 1 Den. 113. An exception to this general rule is illustrated by a late case decided in the Supreme Court of Canada. The plaintiff let lands to the defendant under a lease for eleven months, at a rent of $600 per year, payable monthly. The defendant held over for ten months after the end of his lease, paying the former monthly rent, and then left after a month's notice. It was held that the defendant became a tenant from month to month and not from year to year, and so was liable for no further rent. *Chase* v. *Richards*, Canadian Law Journal, April 15, 1899.

This decision evidently attained practical justice, and it seems also to be correct on principle. The test of whether the tenancy was from month to month or from year to year would seem to depend on what was the implied agreement on holding over. And it is well settled that a tenant, in so holding over is impliedly bound by the agreements of his first lease, so far as they are consistent with the new tenure. Hence in all jurisdictions, even where tenancies from year to year are not allowed, the rent due under the former lease is binding on the tenant until a new agreement is substituted, whether he becomes a tenant from year to year or at will. *Weston* v. *Weston*, 102 Mass. 514. The principal case would seem to turn on what would have been the nature of the tenancy if the defendant had entered for an indefinite time with the agreement to pay rent monthly at the rate of $600 per year, and it seems probable that this would not have been a tenancy from year to year. While it is not necessary in order to create such a tenure that rent should be payable yearly, it should be apparent that the parties contracted with the year as the unit of payment. Hence it is created if an annual rent is payable half yearly, or quarterly, as this implies that the tenancy was intended to last for a year at the least. *Richardson* v. *Langridge*, 4 Taun. 128. In the principal case, the rent, though at the rate of $600 per year, can hardly be called an annual one, as it was not payable yearly or in any fractional part of a year. The defendant was, therefore, a tenant from month to month, and in such a case a month's notice is sufficient. *Steffens* v. *Earl*, 11 Vroom 128 (N. J.). The decision is especially worthy of notice as showing a reaction against a tendency of the courts to imply tenancies from year to year in many cases contrary to the manifest intention of the parties. See *Haynes* v. *Aldrich*, 133 N. Y. 287.

DEPOSIT OF NOTES FOR COLLECTION AND EQUITABLE ASSIGNMENTS. — The distinction between a trust and a debt is well illustrated by cases where a negotiable paper has been deposited in a bank for collection. If the transaction is a simple deposit and not a discount, the bank holds the paper in trust for the depositor until collection, and then becomes a debtor for the amount collected. The practical result of this change in the bank's obligation to the depositor is, that in the event of bankruptcy, the latter can recover the note from the bank before it has been collected, but after collection he must come in with the general creditors. *National Bank* v. *Hubbell*, 117 N. Y. 384; *St. Louis Co.* v. *Johnston*, 133 U. S. 566.

A somewhat peculiar situation arises where the bank gives a check on a second bank for the amount collected, and then becomes bankrupt before the check is honored. Since the payee or a check has no direct claim against the drawee bank the depositor is still only a creditor of the collecting bank, and has no preferred claim to the deposit against which